

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE

Old Republic National Title
Insurance Co.

v.

Civil No. 10-cv-447-JD

John A. Boender, et al.

PROCEDURAL ORDER

Old Republic National Title Insurance Company ("Old Republic") sued John A. Boender, Stephen O. Simons, and S.O. Simons, Inc. ("Boender and Simons"), seeking a declaratory judgment that Old Republic has no liability to the defendants for alleged damages or loss in connection with five title insurance claims. Financial Resources Mortgage, Inc. ("FRM") and C L and M, Inc. ("CLM"), which brokered and serviced the mortgages, respectively, were placed in involuntary Chapter 7 bankruptcy on November 20, 2009. The Trustee for FRM and CLM's bankruptcy estates, Steven M. Notinger, has moved, pursuant to Federal Rule of Civil Procedure 24, to intervene.

The Trustee's motion, and Old Republic's response, raise questions that require additional briefing. The following questions and issues shall be addressed.

1. What is the Trustee's response to Old Republic's argument that the Trustee lacks Article III standing to intervene in the declaratory judgment action in this court?

2. What interest does the Trustee assert in the five claims submitted by Boender and Simons to Old Republic that are the subject of the declaratory judgment action?

3. Are the five claims brought by Boender and Simons property of the jointly-administered bankruptcy estates and subject to the automatic stay?

4. What is the effect of the May 4, 2010, Settlement Agreement in Adversary Proceeding No. 09-01184-JMD on the Trustee's interest in Boender and Simons's claims for title insurance that are the subject of this declaratory judgment action?

5. Does the Trustee seek to intervene as of right or permissively?

6. If the Trustee seeks to intervene as of right, how does the Trustee meet the relevant standard under Federal Rule of Civil Procedure 24(a)?

7. If the Trustee seeks to intervene permissively, how does the Trustee meet the relevant standard under Federal Rule of Civil Procedure 24(b)?

The Trustee shall submit a supplemental memorandum addressing these matters on or before June 30, 2011. Old Republic shall file a response to the Trustee's supplemental memorandum within the time provided by Local Rule 7.1(b).

SO ORDERED.


Joseph A. DiClerico, Jr.
United States District Judge

June 13, 2011

cc: Michael J. Lambert, Esquire
Thomas M. Looney, Esquire
Alec L. McEachern, Esquire
Deborah Ann Notinger, Esquire
Gregory T. Uliasz, Esquire